| | Case 3:05-cv-05661-FDB Docum | ent 7 | Filed 01/09/06 | Page 1 of 2 |
|----------|--|-------|----------------|-------------|
| | | | | |
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON | | | |
| 10 | AT TACOMA | | | |
| 11 | STEVEN T. MILLER, | l | | |
| 12 | Petitioner, | | Case No. C05- | 5661FDB |
| 13 | v. | | ORDER TO SH | IOW CAUSE |
| 14 | GARY FLEMING, | | | |
| 15 | Respondent. | | | |
| 16 | | | | |
| 17 18 | The petitioner in this action is seeking federal habeas corpus relief pursuant to 28 U.S.C. § | | | |
| 19 | 2254. This case has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. | | | |
| 20 | §§ 636 (b) (1) (A) and 636 (b) (1) (B) and Local Magistrates' Rules MJR 3 and MJR 4. | | | |
| 21 | The petitioner filed this petition and on the same day moved to stay the action as he is | | | |
| 22 | currently in state court litigating issues related to his conviction in a personal restraint petition. (Dkt. | | | |
| 23 | # 5 and 6). | | | |
| 24 | The Untied States Supreme Court has recently addressed the stay and abeyance of habeas | | | |
| 25 | corpus petitions. Rhines v. Weber, U.S, 125 S. Ct. 1528. A district Court has discretion to | | | |
| 26 | stay a petition, but the courts discretion has had limits placed on it by the passage of the | | | |
| 27 | Antiterrorism and Effective Death Penalty Act, AEDPA. The stay and abeyance process should only | | | |
| 28 | be used when there is good cause for not exhausting the issue prior to filing the petition. | | | |
| | ORDER Page - 1 | | | |

Case 3:05-cv-05661-FDB Document 7 Filed 01/09/06 Page 2 of 2

Petitioner is directed to **SHOW CAUSE** why the court should stay this petition rather than dismissing the petition without prejudice. A response to this order is due on or before **February 17**th, **2006**. If petitioner fails to respond to this order or if the response shows stay and abeyance to be improper the court will recommend this petition be dismissed without prejudice.

The Court Clerk is directed to send a copy of this Order to petitioner and note the **FEBRUARY 17**th, **2006** date on the court's calendar.

DATED this 9th day of January, 2006.

/S/ J. Kelley Arnold
J. Kelley Arnold
United States Magistrate Judge